In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 188

PAN CARGO SHIPPING CORP., INC., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The *per curiam* opinion of the court of appeals (Pet. App. 2a–3a) is reported at 373 F. 2d 525. The opinion of the district court (Pet. App. 5a–34a) is reported at 234 F. Supp. 623.

JURISDICTION

The order of affirmance of the court of appeals (Pet. App. 4a) was entered on February 27, 1967. The petition for a writ of certiorari was filed on May 23, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

270-531—67

QUESTIONS PRESENTED

1. Whether the courts below properly held that petitioner's vessel, which had been denied the right to load or unload at the port of Ras Tanura, was not "ready to load" at that port within the meaning of the charter.

2. Whether the courts below properly held that Ras Tanura was a "safe port" within the meaning of the charter.

STATEMENT [1]

Petitioner brought suit against the United States, the charterer of petitioner's vessel, the "National Peace," for losses incurred when the Saudi Arabian government refused port privileges to the vessel because it previously had traded with Israel.

On November 25, 1957, the Military Sea Transportation Service issued an invitation to bid on the loading of petroleum products "at one or more ports in the Persian Gulf" during December, 1957, for discharge at ports in the Far East. Petitioner offered its vessel, the "National Peace", for this purpose, and an agreement was reached that petitioner would carry "a full load of Navy Special Fuel Oil from Bahrain or Ras Tanura for discharge at Manila."

The charter agreement, as finally drawn, provided that petitioner would load at "one or more safe ports" in the Persian Gulf, and discharge at one or more "safe ports" in the Far East; the word "safe" having been added to the charter by petitioner's broker (Pet. App. 13a). The charter also provided that the Navy

[1] The facts are set forth in full detail in the opinion of the district court (Pet. App. 5a–34a).

could cancel the agreement if petitioner's vessel was not "ready to load" by 4:00 P.M. on January 5, 1958 (Pet. App. 25a).

Although it knew at all times that Ras Tanura was a contemplated loading port, and also that there was an Arab boycott of ships which had traded with Israel,[4] petitioner never advised the MSTS that the "National Peace" had previously used the name "Memory," and had traded with Israel under that name (Pet. App. 10a–13a).

On December 17, 1957, while the "National Peace" was en route to the loading area, the Navy designated Ras Tanura as the loading port (Pet. App. 14a–15a). Petitioner made no protest, and did not advise the Navy that the vessel was subject to a possible boycott. On the night of December 17th, the vessel reached Ras Tanura and proceeded to the pier designated by MSTS, to which she was made "all fast" (Pet. App. 15a).

However, until the permission of the shore authorities is obtained, no person may board or leave a ship, nor may cargo be loaded or unloaded. This permission is known as "pratique" and ordinarily it will be granted when the medical officer is satisfied that the crew is not infected with any contagious disease (Pet. App. 15a).

[4] Petitioner attempts to imply (Pet. 8–9, 14–15) that it should not have known that it incurred the danger of boycott at Ras Tanura. The facts, set forth in the district court's opinion (Pet. App. 10a–13a), show that the court's rejection of that view is fully supported by the evidence, and that petitioner's president admitted he knew of the boycott (Pet. App. 12a).

Soon after the "National Peace" was at berth, a Saudi Arabian health officer came aboard, and asked to see all the ship's logs. After seeing a log notation of a March 1957 trip to Israel, he ordered that discharge of ballast be stopped. A short time later, the same official told the ship's officers that pratique was refused, and that the ship must leave port immediately and would not be permitted to load. The ship left the dock as ordered, went about two miles and anchored. It never thereafter came closer to shore, nor did the master or any member of the crew go ashore (Pet. App. 16a). A Naval inspector who went to the dock in order to determine whether the ship's tanks were ready to carry the oil cargo was not able to go aboard (Pet. App. 17a).

Attempts by the owners and the American Consul in Saudi Arabia to obtain permission for the vessel to load at Ras Tanura were unavailing; petitioner's agent was advised that it would be "some weeks" before the vessel could be removed from the blacklist (Pet. App. 17a–23a). Petitioner also sought to have the Navy designate an alternative loading port, such as Bahrain. However, the Navy reported that (Pet. App. 17a) "Caltex advises * * * loading Bahrain cannot be accomplished."

Meanwhile, the "National Peace," at anchor two miles from Ras Tanura, was running short of fuel. Finally, a distress call by the ship, on January 2, 1958, was answered by a Navy vessel, which supplied the "National Peace" with enough fuel to reach Abadan, Iran, where she could refuel (Pet. App. 21a–25a).

On January 6, 1958, while the vessel was at Abadan, the Navy gave petitioner written notice that it was

exercising its option under the charter to cancel, because the vessel had not been "ready to load" by 4:00 P.M., January 5, 1958. Following the cancellation, the "National Peace" returned to the United States in ballast (Pet. App. 25a).

ARGUMENT

As the district court ruled, it is obvious from an equitable standpoint, that, as between petitioner and the United States, the loss inflicted on petitioner by the Saudi Arabian government's denial of port privileges should be borne by petitioner, "which knew the facts as to the voyage of Memory I to Israel and which deliberately took the risk * * *," rather than the United States, which did not know the facts (Pet. App. 26a).[4] Having gambled and lost, petitioner claims that the charter placed on the United States a risk not known to it. However, the courts below properly ruled that the charter did not shift the risk of such a loss to the government.

1. Petitioner contends that the Navy wrongfully cancelled the charter, because its vessel allegedly was "ready to load" when it was secured to the dock at Ras Tanura. However, the vessel was not ready to load because it failed to obtain pratique at the loading port. Obtaining pratique is the responsibility of the vessel owner, and in accordance with established principles of maritime law, a vessel which has not ob-

[4] In substantial part, the petition is no more than an attack on the district court's factual finding (Pet. App. 26a), specifically affirmed by the court of appeals (Pet. App. 3a) that petitioner knew of the boycott and deliberately took the risk. That finding is amply supported by the evidence (see n. 2, *supra*), and cannot be overturned. F.R. Civ. P. 52(a).

tained pratique is not "ready to load." See Carver, *Carriage of Goods by Sea* (10th ed.), 861–862 (emphasis added):

> *Quarantine.*—Where the ship is not herself in readiness to receive or discharge cargo but has been directly disqualified from loading, or unloading, as by quarantine regulations of the port *or for reasons of state*, it has been held that the shipowner cannot claim for the consequent delay.

In *White* v. *The Steamship "Winchester" Co.*, 23 Scottish Law Rptr. 342, 347–348 (1886), a ship was ordered into a 20-day quarantine enforced by Turkey against all ships from Egyptian ports. The court held for the charterer, reasoning as follows (emphasis added):

> Is it enough that the vessel shall sail to the appointed place of loading even where * * * she is disqualified from receiving cargo—where pratique cannot be obtained by the captain * * *. [T]he weight of sound reasoning is against that view, and * * * *until the vessel is not only at the place of loading, but the captain or owners are in a position to place her at the disposal of the charterers as open to receive cargo, she cannot be regarded as an arrived ship within the meaning of the contract* * * *. It cannot make any real difference that the vessel was in fact allowed to sail up to the intended place of loading, for she was immediately ordered to leave Macri * * *.

Accord, *The Austin Friars*, 71 L.T. Rep. 27 (1894).

Here, the "National Peace" never was at the disposal of the Navy ready to load; no one was per-

mitted to leave the ship or go aboard, including the Navy inspector, who was unable to go aboard to determine whether the vessel's tanks were in satisfactory condition to take on oil.[5] Since the vessel never was at the disposal of the Navy ready to load, there is no reason for imposing its losses on the government as charterer.

2. It also is plain that Ras Tanura was a "safe" port within the meaning of the charter, and that by designating it as the loading port the Navy met its obligation to designate a safe port.[6] Petitioner argues that (Pet. 16–18) (1) a "safe" port is one "politically" safe as well as "physically" safe and (2) the port must be "safe" for the particular vessel, not only for vessels in general.

Even were these propositions accepted without qualification, petitioner's case would not be established. It is settled that "when a charter names a port and the master proceeds there without protest, the owner accepts the port as a safe port, and is bound to the conditions that exist there." Poor on Charter Parties (3d ed.) 63; *The Maggie Moore,* 8 Fed. 620 (C.C. Md.). That is the case here. When the Government

[5] Petitioner's contention (Pet. 13) that paragraph 6 of the charter (Pet. App. 27a) gave it the right to recover is adequately refuted by the district court's opinion (Pet. App. 27a–28a), where it is noted that the contention is "much too facile."

[6] The Navy had no obligation to designate more than one "safe" port. If, as held below, Ras Tanura, the designated port was a "safe" port, and the "National Peace" was not "ready to load" there by 4:00 P.M., January 5, 1958, there is no doubt that the Navy had the option to cancel the charter (Pet. App. 25a).

designated Ras Tanura as the loading port, petitioner's vessel proceeded there without protest.[1]

In addition, the court below was clearly justified in its refusal to read the provision that a "safe" port must be designated, to mean a port safe from risk of loading interference resulting from the Arab boycott. Other portions of this charter indicate that the word "safe" is used in the sense of physically safe (Pet. App. 34a). If petitioner, which alone knew of the danger from the Arab boycott, meant the word "safe" to cover this contingency, it should have said so when its broker added the word "safe" to the provision relied upon.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

CARL EARDLEY,
Acting Assistant Attorney General.

MORTON HOLLANDER,
WALTER H. FLEISCHER,
Attorneys.

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[1] This fact distinguishes the cases relied upon by petitioner. Thus, in *The Gazelle*, 128 U.S. 474, the master refused to sign the bill of lading as soon as a port too shallow for his vessel was designated as the discharge port. In *Mencke* v. *Cargo of Java Sugar*, 187 U.S. 248, the vessel's agent similarly advised the charterer promptly that the port designated was unsafe because the vessel was unable to pass under the Brooklyn Bridge, and objected to the designation of a port requiring her to do so.

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